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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

GENE McLENITHAN, JR.,

Plaintiff,

v.

MAX WILLIAMS, et al.,

Defendants.

Case No. 3:09-cv-85-AC

DECLARATION OF TAMARA L.
DOHRMAN

STATE OF OREGON)
) ss.
County of Marion)

I, Tamara L. Dohrman, being first duly sworn, depose and say:

1. The Oregon Department of Corrections (ODOC) employs me as the Assistant Director of General Services. Part of my responsibilities includes the supervision and oversight of Distribution Services. In that capacity, I am one of the custodians of the records of ODOC.

2. Distribution Services provides the primary logistics support operation for ODOC. As part of that function, Distribution Services develops statewide food service standards and operational oversight related to feeding inmates. In addition, it manages the inmate commissary (also known as “canteen”) program for thirteen ODOC institutions located throughout the state.

3. As part of my responsibilities as the Assistant Director of General Services, I oversee the sections that procure and distribute kosher meals to inmates who require them. This involves an assessment of many factors, including religious acceptability of the food, the nutrition of the food, the availability of vendors to provide the required food, the ability of institutions to prepare the food in a kosher manner, and the overall cost of the food.

I. ODOC’s provision of kosher food in the past.

4. ODOC first established Administrative Rules for the provision of kosher food in 1998.¹ Since that time, ODOC has utilized a variety of methods and vendors in order to provide kosher meals.

5. Initially, ODOC implemented procedures to ensure that the meat-alternative diet could be made kosher within the existing kitchens at ODOC institutions. This involved procuring some kosher items and storing them separately, preparing vegetables in a separate room or separate area of the kitchen, and ensuring that the pots used to cook beans and rice for the kosher diet maintained their kosher status.

6. There were limited Jewish inmates who required kosher meals, making the maintenance of a kosher meat alternative line cost prohibitive. There were issues with the consistency of the implementation of this program, as each institution had different kitchen facilities and different security and differing security and safety needs.

7. It was also difficult to maintain the kosher meat-alternative lines. The cookware and utensils would frequently experience contamination from inadvertent and intentional action

¹ See Attachment 1, ODOC Administrative Rules, Chapter 291, Division 84, entitled *Food Services – Kosher Diets*.

by inmates. For example, inmates would intentionally introduce pork to the preparation area. This would result in the cookware being unavailable until it was returned to a kosher state through proper preparation and cleaning. In addition, kitchen space within ODOC became increasingly limited, and using a significant amount of space in kitchens for kosher food proved ineffective.

8. Inmates who required a kosher diet took issue with any actual or perceived contamination. Those inmates requested that kosher food, including condiments, be labeled kosher. They remained distrustful of any kosher food other than pre-packaged kosher food due to concerns over contamination.

9. Given these concerns, several years ago it was decided to develop kosher menus that are a combination of pre-packaged entrees and supplemental menu items. The purpose of this was to construct a kosher compliant, nutritionally balanced diet in a cost-effective manner that satisfied the needs of the inmates.

10. Several different options for obtaining the pre-packaged kosher entrees were considered. The first option, which was eventually selected, was to procure the pre-packaged kosher entrees from a private vendor.

11. The second option considered was to obtain kosher meals from the State of Washington, which operated kosher kitchens in their institutions at the time ODOC was seeking an alternative. This option was not selected because it was determined that obtaining kosher food at from the State of Washington would be more expensive than obtaining it from vendors.

12. ODOC also considered opening a kosher production kitchen in one of ODOC's major institutions. This kitchen would cook the kosher foods and then chill or freeze them for delivery to all other institutions. Again, we determined that this would also be cost prohibitive to operate and present many of the same challenges that ODOC faced when operating a kosher preparation area in each institution.

13. Thus, it was determined that procuring pre-packaged kosher entrees from a private vendor was the most cost-effective means of serving the needs of inmates who keep kosher. ODOC began purchasing pre-packaged kosher entrees prior to 2000. Initially, ODOC used “shelf stable” kosher entrees that did not need to be frozen. At some point between 2000 and 2002, ODOC began using frozen kosher entrees.

II. ODOC’s current provision of kosher food to inmates.

14. Inmates in the custody of ODOC have three dietary options. The first option is mainline fare, which includes the provision of meat and dairy. The second option is the meat-alternative tray. This option contains no meat, and the dairy components of the tray are optional. The meal consists of rice, beans, fresh fruit and vegetables, and bread. The meat-alternative tray is designed to meet the needs of religious adherents, such as Seventh-day Adventists, who decline to eat meat or the unclean foods identified in Leviticus. The first two options—mainline and meat alternative—are available to each inmate.

15. The third option is the kosher diet. ODOC’s current practice is to purchase pre-packaged frozen kosher entrees from vendors and supplement those meals with additional kosher menu items.

16. Some of the food served as part of the kosher diet is also served as part of the mainline and meat alternative diets. The institutions in ODOC maintain either a vegetable preparation room, in which no meat products can be processed, or a kosher preparation area. This allows each institution to provide kosher vegetables. Some of the food on the kosher diet is different from the food served in mainline. This includes bread and the main lunch and dinner dish.

17. The breakfast tray for the kosher option consists of items such as eggs, fruit, milk, coffee, bread, peanut butter and cereal, without a separate kosher entree. A certain number of lunches each week consist of a similar tray, with meat-free sandwiches as the entree.

18. The entree for the kosher dinner and for a certain number of kosher lunches is a frozen entree, which resembles a TV dinner, along with additional kosher items such as fruits, vegetables, and bread. The entree is cooked at the factory, placed in a plastic container, and then it is double wrapped. The institutional kitchen staff heats these entrees in a microwave oven. Each institution in ODOC is required to have available a kosher microwave to prepare kosher entrees. These microwaves are only used for kosher entrees and maintain their kosher status.

19. These pre-packaged kosher dinners contain no meat; instead they contain soy products that are made to look and taste similar to meat. During the most-recent price agreement, obtained through the competitive bid process, ODOC determined that it could obtain meat and meatless kosher entrees for the approximately the same price. At this time, ODOC has not determined the feasibility of providing meat-based kosher entrees.

20. The kosher entrees are delivered frozen to the institutions. They are double packaged in order to protect the kosher meal. To prepare the meals, the outer packaging is removed and the entree is placed in the microwave for warming. The inmate is served the heated entree with the inner wrapping intact to maintain the kosher state. The entree is supplemented by menu items such as kosher bread, margarine, vegetables, and fruit.

21. The Food Services Administrator (FSA) conducts audits of each institution to ensure that they are ready to serve kosher meals when needed and that the institutions meet ODOC's kosher requirements. Training is available for all the institutions to ensure they are handling and preparing kosher meals properly. As part of this training, ODOC provides a DVD showing proper kosher preparation techniques and procedures to each institution for refresher training purposes.

22. Disposable paper trays and plastic utensils are provided to assure the food and the utensils are not cross-contaminated with pork, alcohol or contaminating products and meet kosher sanitary standards.

23. ODOC works directly with the Jewish community—both inmates and the outside population—to provide the best meals possible and still maintain the needs of security and the institutions operations. Moreover, each kosher meal, consisting of both the entree and supplemental kosher items, has been formed as part of the menu development process. This process ensures that the kosher meals are nutritionally sound.

24. Several steps were taken in the menu development process.² ODOC employs a registered Dietitian who creates kosher menus, which are updated when necessary. The menus must comply with specific caloric and nutritional standards and are certified for nutritional value in accordance with dietary standards. The Dietitian also prepares special medical or alternative diet kosher menus, depending on the dietary and medical needs of individual inmates. Finally, the Dietitian provides institutions with kosher sack lunch menu for use with religious fasts, work crews, transfers, or other situations where inmates are not able to attend regular meal times.

25. In addition to the regular meals, inmates can purchase kosher canteen items. At many institutions, including Snake River Correctional Institution, kosher items are clearly listed on the canteen order form with a “k.”³ In other institutions, inmate can determine which items are kosher by sending an inmate communication to the Commissary Manager. Attached are true and correct copies of inmate Gene McLenithan’s commissary purchases.⁴

26. Additional preparation and procurement is required for the Jewish holiday of Passover. To prepare for Passover, the Dietitian works with Religious Services to develop a plan. The Dietitian develops the annual eight-day menu for Passover. The Dietitian then compiles the numbers of inmates participating in Passover per institution and requests the purchase of the menu items and Seder plates, which are plates consisting of religiously-significant menu items. The Dietitian then develops distribution list per institution of items to be

² See Attachment 2, ODOC Kosher menu.

³ See Attachment 3, SRCI canteen list.

⁴ See Attachment 4, Canteen sales receipts.

sent. Finally, the Dietitian works with the Inventory Manager, Property Supply Specialists and inmate workers to divide Passover orders for shipment to participating institutions. ODOC also works to ensure that inmates do not change institutions during the Passover period.

III. Cost-effective procurement of kosher food.

27. ODOC makes every effort to secure the lowest possible price for kosher entrees and supplemental kosher food items, while still providing nutritionally sound meals to inmates who require a kosher diet.

28. ODOC has reviewed the decision to provide prepared kosher entrees to inmates since that initial determination was made. ODOC has contacted other states, including Washington State, and has sent out inquiries to all 50 states. ODOC has only identified two states (New York and Texas) that maintain separate kosher kitchens, each in a single institution. The remainder of the States either have a main-line option that satisfies kosher requirements or utilize pre-packaged kosher entrees.

29. ODOC has consulted with the chairman of Jewish Prisoner Services International, Chaplain Gary Friedman. Chaplain Friedman's recommendation was that ODOC not operate a kosher kitchen because of the complexities involved and the issue of maintaining a kosher kitchen in a correctional facility.

30. Based on these considerations, ODOC has determined that the use of pre-packaged kosher entrees, with supplemental kosher items, is the most cost-effective means of providing kosher food. In addition, use of pre-packaged kosher entrees is currently the most operationally-efficient means of providing kosher meals. Using this method, both staff and inmates are assured that the meals provided are kosher, which reduces inmate complaints.

31. Supplemental items are procured from a variety of sources and vendors. For the supplemental kosher items, ODOC attempts to use kosher items for both general population and kosher diets. If dual-use foods are unavailable, then we must purchase kosher items in smaller

quantities at increased cost over and above the normal food cost. For example, kosher bread is more expensive than traditional bakery bread.

32. The entrees are purchased from outside vendors. The kosher menus developed by the Dietitian provide requirements and specifications for the procurement of kosher entrees. These specifications are sent to ODOC purchasing to develop a formal solicitation on the Oregon Procurement Information Network (ORPIN). ORPIN is the State of Oregon's designated system of record for public solicitations and award of procurement contracts.

33. Both the specifications for kosher entrees and the vendors who provide the kosher entrees and supplemental menu items have undergone changes since ODOC first began to use pre-packaged entrees to serve the needs of kosher inmates. ODOC recently completed an open-bid process that resulted in the procurement of kosher entrees for a lower price.

34. The previous vendors for kosher entrees were 21st Century, Jim Foods, and LA Foods, which supplied kosher meals made by Alle Processing. ODOC has used entrees prepared by Alle since ODOC began serving frozen entrees. Alle Processing currently supplies kosher meals to between 30 and 40 federal prisons and the majority of the states.

35. The cost per entree using these vendors was between \$3.60 or \$3.96—depending on the meal selected—in 2009.

36. State law requires periodic solicitation for open competitive bids. In accordance with state law, ODOC completed open solicitation process for kosher entrees. During the recent open bid process, a purchasing agent for ODOC completed the formal solicitation. The purchasing agent prepared the appropriate documents—based on the specific requirements and specifications of the kosher menu developed by ODOC—and posted the open competitive bid on the system on July 13, 2009.

37. The 109 food vendors who were registered on the ORPIN system were notified of the public bid as a result of the posting on ORPIN. The notification is sent to the business' registered e-mail address that they provided.

38. ODOC received no responses to this first bid.

39. As a result of the lack of response to the first bid, the Food Services Administrator (FSA) proactively sought bidders for the process. The FSA researched the market in an attempt to identify potential suppliers and brokers. The FSA requested some of our known vendors to assist us in identifying other manufacturers of prepared kosher meals. Finally, the FSA directly contacted several previously-registered vendors to notify them there would be a second bid opportunity and encouraged them to participate in the next bid process.

40. On July 20, 2009, the kosher food procurement was re-posted on ORPIN. Two quotes were submitted in response to the second posting, one by LA Foods and the other by JNS Foods, LLC. LA Foods would continue to supply kosher meals from Alle Processing. JNS would supply kosher meals from Gourmet Kosher.

41. JNS had a lower price. In addition, JNS had more flexibility in menu options. However, ODOC had experienced quality issues with some of the food from JNS in the past. ODOC therefore placed an initial order with LA Foods to ensure continuity thorough the continuing procurement process. ODOC also ordered samples from JNS in accordance with bid specifications and requirements. The samples were found to be responsive to the bid and acceptable product.

42. ODOC determined that it would utilize both vendors to provide kosher meals. ODOC has purchased product from both vendors and currently utilizes JNS as the primary vendor. Inmates have recently begun receiving the Gourmet Kosher meals supplied by JNS. The cost per entree using JNS is between \$2.52 or \$2.63, depending on the meal selected. Thus, ODOC achieved saves up to \$1.44 per entree.

43. Using these vendors, ODOC is able to supply kosher food at an average cost of \$7.99 per inmate, per day. This includes only the costs of kosher food products, which are the kosher entrees and supplemental kosher items such as bread, and the kosher cafeteria supplies.

This figure does not include additional staff time or additional costs to maintain kosher microwaves and separate vegetable rooms.

44. DOC orders a trailer load of frozen kosher entrees at a time to receive bulk discounts, as well as minimize delivery costs. The kosher entrees are stocked in the Central Distribution Center (CDC) warehouse, located in Salem, Oregon. Individual Institutional Food Managers order the product as needed to for the number of inmates identified at their institutions as requiring kosher meals.

45. Considering all factors—including inmate needs, institutional security, and logistical concerns—it is my belief that ODOC employs the most cost-effective and operationally efficient means to secure kosher food. As a result of market dynamics and cost-cutting measures which we have already implemented, it is highly unlikely that any additional discounts can be acquired.

46. ODOC has secured the lowest possible price for these kosher entrees and supplemental kosher food items. ODOC purchases a trailer load at a time to receive better pricing. Ordering multiple trailer loads at a time would not provide any additional savings from the vendor. In addition, there is not sufficient freezer space to store additional trailer loads.

47. ODOC will continue its current practice of purchasing pre-packaged kosher entrees from vendors and supplementing those meals with additional kosher menu items. As is the case with all purchasing decisions, ODOC will revisit this decision if a more-cost effective means of providing satisfactory kosher meals is available.

IV. Overall cost to ODOC for the provision of kosher food.

48. Currently, there are 62 inmates who receive kosher meals in ODOC, at a cost of \$7.99 per inmate, per day. Of those 62 inmates, 43 identify as Jewish or Messianic Jews, Nazarene Israelites, Torah Men or Assemblies of Yahweh. Of the remaining 19 inmates, 16 are Seventh-day Adventist, one is Jehovah's Witness, one is Christian, and one is Native American.

49. The cost per inmate, per day to provide non-kosher meals from the mainline option, which includes both the mainline option and the meat alternative tray, is \$2.35.

50. Thus, ODOC spend an additional \$5.64 per day for each additional inmate who requests kosher food. This totals \$4117.20 in additional cost per biennium for each additional inmate who requests kosher food.

51. Providing kosher food to the 62 inmates currently receiving kosher food results in \$255,266.40 in additional expenditures for ODOC per biennium. This figure does not include additional staff time.

52. If ODOC is required to provide 100 additional inmates with kosher food, it would cost ODOC an additional \$411,720.00 per biennium.

53. ODOC's total budget for food and kitchen supplies is \$25,663,117 for the 2009-11 biennium.

I declare under penalty of perjury and the laws of the State of Oregon that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATED this 10th day of March, 2010.


TAMARA L. DOHRMAN

CERTIFICATE OF SERVICE

I certify that on March 10, 2010, I served the foregoing DECLARATION OF
TAMARA L. DOHRMAN upon the parties hereto by the method indicated below, and addressed
to the following:

Gene McLenithan, Jr., SID #8404164
Oregon State Penitentiary
2605 State Street
Salem OR 97310-0505

☐ HAND DELIVERY
☒ MAIL DELIVERY
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☐ E-FILE



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